

REMARKS

Formal Matters

Claims 58, 59, 60 and 70-72 are pending after entry of the amendments set forth herein.

Claim 72 has been amended to more particularly point out and distinctly claim the invention. The amendment at line 3 relating to further defining the phospholipids as being cholesterol glutarate was contained within now cancelled claim 66. The amendment relating to inhaling the volume of aerosol particles of formulation and aerosol-free air was added at the request of the Examiner to provide an antecedent basis for the final element of claim 72. Accordingly, no new matter has been added and these amendments are believed to be proper under 37 U.S.C. 1.116.

Specification Amendments

The Examiner objected to the specification language relating to the priority. The specification was amended to delete the claim to priority relative to application serial no. 08/752,946 in applicants' response filed on September 6, 2006. Accordingly, the claims to priority now described in the specification are now believed to be correctly indicated thereby overcoming the objection.

35 U.S.C. §112 Rejection

The claims were rejected under 35 U.S.C. §112, second paragraph. In support of the rejection the Examiner pointed out that the claims did not include an antecedent basis for the final term in that the claims did not recite a step of the patient inhaling a volume. In view of such applicants have amended claim 72 to include a specific step relating to inhaling a volume of aerosol particles and aerosol-free air. This amendment is believed to be sufficient to provide an antecedent basis for the final element of the claim and overcome the objection.

35 U.S.C. §102 and §103 Rejections

A number of 35 U.S.C. §102 and §103 rejections were made against different claims. However, on page 12 of the Office Action underneath the subheading "Conclusion" the Examiner specifically indicates that "**claim 66 is free of the prior art of record.**" Claim 66 indicated that the phospholipid was comprised of cholesteryl glutarate. This limitation has been included into independent claim 72. Accordingly, independent claim 72 is believed to be free of the prior art. The remaining claims are all dependent directly or indirectly on claim 72 and as such are believed to be free of the prior art.

Accordingly, without acquiescing to the validity of the rejections put forth applicants wish to expedite prosecution. Accordingly, claim 72 has been amended to include the limitations contained within claim 66 with respect to further defining the phospholipids which is believed to overcome all of the rejections are place the application in condition for allowance.

CONCLUSION

The specification has been amended to correctly refer to the priority. Claim 72 has been amended to include an antecedent basis and overcome the 35 U.S.C. §112, second paragraph rejection. In response to the 35 U.S.C. §102 and §103 rejections although applicants do not acquiesce to the rejections they have been overcome by amending claim 72 to incorporate the limitations of cancelled claim 66 which the examiner has indicated are free of the prior art. Accordingly, the rejections are all believed to have been overcome and the application is believed to be in condition for allowance.

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number AERX-061.

Respectfully submitted,
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Date: 22/FEB/07

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